

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M290484

AFA/

HECTOR D. LASALLE, P.J.
MARK C. DILLON
COLLEEN D. DUFFY
BETSY BARROS
FRANCESCA E. CONNOLLY, JJ.

2023-06788

The People, etc., respondent,
v David Berrios, appellant.

DECISION & ORDER ON MOTION
Assignment of Counsel

(Ind. No. 71233/2022)

Appeal by David Berrios from a judgment of the Supreme Court, Queens County, rendered July 6, 2023, following a trial. Pursuant to Criminal Procedure Law § 380.55(2) and upon the affirmation of Lisa A. Packard, dated July 18, 2023, it is

ORDERED that pursuant to County Law § 722 the following named attorney is assigned as counsel to prosecute the appeal:

Patricia Pazner
Appellate Advocates
111 John Street - 9th Floor
New York, New York 10038

and it is further,

ORDERED that the appeal will be heard on the original papers (including a certified transcript of the proceedings, if any) and on the appellant's and the respondent's briefs; the appellant and the respondent are directed to upload, through the digital portal on this Court's website, digital copies of their respective briefs, with proof of service of one hard copy on each other, or, if the appellant is self-represented and unable to upload a digital copy, to file one original copy with the Clerk of this Court, with proof of service of one hard copy on the respondent (22 NYCRR 670.9[a]); additionally, the appellant is directed to file proof of service of a subpoena upon the clerk of the court of original instance requiring all documents constituting the record on appeal to be filed with the Clerk of this Court (22 NYCRR 1250.9[a][4][i]); and it is further,

ORDERED that the stenographer of the trial court is directed promptly to make, certify, and file two transcripts of the proceedings of any pretrial hearings, of the plea of guilty or of the trial, and of the imposition of sentence in this action, except for those minutes previously transcribed and certified (*see* 22 NYCRR 671.9); and it is further,

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ORDERED that in the event that the case was tried to a conclusion before a jury, the stenographer shall also make, certify, and file two transcripts of the minutes of proceedings during jury selection; and it is further,

ORDERED that the Clerk of the trial court shall furnish one certified transcript of each of the proceedings set forth above to the appellant's counsel, without charge (*see* CPL 460.70); assigned counsel is directed to turn over those transcripts to the respondent when counsel serves the appellant's brief on the respondent; and it is further,

ORDERED that in the event the stenographer has already prepared a copy of any of the minutes for a codefendant, then the Clerk of the trial court is directed to reproduce a copy thereof for assigned counsel; and it is further,

ORDERED that upon service of a copy of this decision and order on motion upon it, the Department of Probation is hereby authorized and directed to provide assigned counsel with a copy of the presentence report prepared in connection with the appellant's sentencing, including the recommendation sheet and any prior reports on the appellant which are incorporated in or referred to in the report, and to provide additional copies to this Court upon demand; and it is further,

ORDERED that in the event an issue as to the legality, propriety, or excessiveness of the sentence is raised on appeal, or if assigned counsel cites or relies upon the probation report in a brief or motion in any other way, counsel shall provide a complete copy of such report and any attachments to the Court and the District Attorney's office prior to the filing of such brief or motion; and it is further,

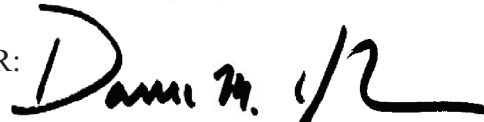
ORDERED that the appellant's time to perfect the appeal is extended; assigned counsel shall prosecute the appeal expeditiously in accordance with this Court's rules (*see* 22 NYCRR 1250.9) and written directions; and it is further,

ORDERED that in the event the file has been sealed, it is hereby unsealed for the limited purpose of allowing assigned counsel or his or her representative access to the record for the purpose of preparing the appeal; such access shall include permission to copy the papers insofar as they pertain to the appellant; and it is further,

ORDERED that assigned counsel is directed to serve a copy of this decision and order on motion upon the clerk of the court from which the appeal is taken.

LASALLE, P.J., DILLON, DUFFY, BARROS and CONNOLLY, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a large, stylized flourish.

Darrell M. Joseph
Acting Clerk of the Court

Appellant's address:

23-B-3147
Elmira Corr. Fac.
P.O. Box 500
Elmira, NY 14901-0500

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